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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1995

Addendum

SRI LANKA

[27 October 1997]

CONTENTS

		Paragraphs	Page
I.	INFORMATION OF A GENERAL NATURE	1 - 38	2
	A. General legal framework within which torture is prohibited	1 - 8	2
	B. International and national legislation which contain provisions of wider application than the Convention	9 - 15	3
	C. Judicial, administrative and other authorities having jurisdiction over matters dealt with in the Convention	16 - 36	5
	D. Practical difficulties in implementing the Convention	37 - 38	8
II.	INFORMATION RELATING TO ARTICLES 2-16 OF THE CONVENTION	39 - 135	8

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I. INFORMATION OF A GENERAL NATURE

A. General legal framework within which torture is prohibited

1. Action against torture has had a place in Sri Lanka's law since 1883. Any person who tortures another would be guilty of the offence of causing hurt or other offence which is punishable under the criminal law of the country (sections 310-329 of the Penal Code). In this the Penal Code makes no distinction between a private individual and a State officer who causes hurt to another. Both are guilty of the same offence. The Penal Code, however, provides for an aggravated form of committing the offence of hurt for which the punishment is greater where the hurt is caused in order to try to extract information or a confession which may lead to the detection of an offence or to compel the restoration of property or satisfaction of a claim (section 321). Although no distinction is made between State officers and private persons in the penal provisions, it is significant that three of the four illustrations given by the Penal Code under section 321 refer to an act of torture by a State officer.

2. The right to freedom from torture was recognized in the First Republican Constitution (1972) which declared that "no person shall be deprived of life, liberty or security of person, except in accordance with the law". The Second Republican Constitution of Sri Lanka (1978) very specifically recognized the right to freedom from torture in article 11 and infringement or imminent infringement of this right was made justiciable before the highest court of the land - the Supreme Court.

3. It must be noted that the Supreme Court in exercising its fundamental rights jurisdiction under article 126 of the Constitution does not function as a criminal court. The standard of proof that is required in these cases is proof by a preponderance of probability as in a civil case and not proof beyond reasonable doubt. Moreover, the method of adducing evidence varies significantly. In a fundamental rights application, the Court relies solely on the petition, affidavits and documentary evidence. Oral testimony is heard only in exceptional circumstances. Thus, the Court has neither the opportunity of observing the demeanour of witnesses nor the benefit of cross examination. For these reasons relief granted by the Supreme Court in cases of torture is in the nature of compensation awarded to the victim and an order to the appropriate authority to take disciplinary action against the offender. It should be noted that the Supreme Court is free to order compensation to a victim of torture where it is satisfied on a balance of probabilities that some State officer is liable for the infringement of the fundamental right guaranteed by article 11, although he may not be identified upon the evidence available.

4. On the basis of information which is disclosed in a fundamental rights application the Attorney-General is empowered to set in motion the machinery of the criminal law against any offender in respect of whom there is sufficient evidence to maintain a criminal charge. For this purpose, he can direct the police to investigate any allegation of torture and a decision would be taken as to whether any offender should be prosecuted upon the basis of the material submitted to the Attorney-General by the police. The

Attorney-General's discretion to prosecute would be confined to cases where both the identity of the offender and the commission of the offence can be proved beyond reasonable doubt.

5. In September 1982, the Government of Sri Lanka deposited with the Secretary-General of the United Nations a Unilateral Declaration on Torture declaring its intention to comply with the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in 1975, and undertook to implement by all appropriate means the principles set forth in the Declaration.

6. Sri Lanka acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by depositing the instrument of accession with the Secretary-General of the United Nations on 3 January 1994. The Convention entered into force for Sri Lanka on 2 February 1994. Enabling legislation to give effect to Sri Lanka's obligations under the said Convention was passed by Parliament on 25 November 1994. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994 (CAT Act) strengthened considerably the existing legal framework in which torture was prohibited.

7. The CAT Act designates and defines torture as a specific crime and vests the High Court of Sri Lanka jurisdiction over offences of torture committed in and even outside Sri Lanka. It also amends the extradition law to provide for an "extradite or prosecute" regime as envisaged in the Convention. Procedure relating to investigations, taking a suspect into custody, prosecution, etc. will continue to be governed by the general penal law of the country.

8. Other laws relating to rules of criminal procedure and evidence are also geared towards the elimination of torture.

B. International and national legislation which contain provisions of wider application than the Convention

9. Sri Lanka is party to the following international instruments which contain provisions of wider application than those provided for under the Convention against Torture: International Covenant on Civil and Political Rights (ICCPR); Geneva Conventions of 12 August 1949 on the protection of war victims.

10. Domestic legislation of a wider application is contained in the Penal Code.

11. It is relevant to mention that Sri Lanka has taken a decision to ratify the Optional Protocol to the ICCPR and is also in the process of drafting a new Constitution which would abolish the Executive Presidency and vest executive power in Parliament, strengthen the Fundamental Rights chapter and provide for extensive devolution of power. The Parliamentary Select Committee comprising representatives of all political parties holding seats in Parliament, which was entrusted with the task of drafting the new Constitution, formally released 18 chapters of the draft new Constitution to

the public in March 1997. The Select Committee process has involved widespread consultations with members of the public, registered political parties, non-governmental organizations and academics.

12. The Fundamental Rights chapter in the draft Constitution is wider in scope than that of the present Constitution. It introduces a number of new rights not contained in the old chapter, such as the right to life, the right to affirmative action for disadvantaged sections of the society, the right to leave the country, the right to own property and to fair compensation for acquisition, the right to privacy and the right to information.

13. The proposed new Constitution also confers to a broad range of rights, which have always formed the cornerstone of the general criminal law of the land, the status of constitutionally guaranteed fundamental rights. These rights which have direct relevance to the implementation of the provisions of the Convention, are:

The right of an arrested person to communicate with a relative or friend (article 10 (4));

The right to retain legal counsel (article 10 (5));

The right to be told the reasons for arrest, and the practice of a 24-hour limit of custody prior to being brought before a judicial officer (article 10 (6));

The right to reasonable bail (article 10 (7) (a));

The right to be charged or released without unreasonable delay (article 10 (8));

The freedom from self-incrimination (article 10 (12));

The right not to be tried more than once for the same offence (article 10 (14));

The right to humane treatment whilst in custody (article 10 (16)).

14. In the draft Constitution, the restrictions on fundamental rights have been strictly limited to specific situations where they are necessary in the interests of a democratic society. The rights expressed in the 1978 Constitution were mainly available to "citizens" but this has been expanded in many instances to "persons" under the draft Constitution. The right to apply to the Supreme Court in respect of infringement of fundamental rights by the executive or an administrative authority has been expanded to include infringement by judicial action in respect of criminal proceedings in courts of original jurisdiction. Public interest litigation has been accorded recognition and the time-limit for filing a fundamental rights application has been extended from one month to three months.

15. Under the draft Constitution the Supreme Court is to have the power of judicial review of future legislation. In aiming to strike a balance between two very important interests, the stability of the law and the compliance of

the law with fundamental rights and freedoms protected by the Constitution, the Parliamentary Select Committee, after much deliberation, has agreed that the Supreme Court should have the power to review future legislation up to a period of two years from the date of enactment. These, however, remain draft provisions at the time of writing. Parliament will consider these proposals with a view to their adoption in the near future.

C. Judicial, administrative and other authorities having jurisdiction over matters dealt with in the Convention

1. High Court

16. Under the CAT Act, the High Court has been vested with the jurisdiction to hear cases of torture committed within and outside Sri Lanka. The jurisdiction of the High Court has to be invoked by the Attorney-General after he is satisfied that there is sufficient evidence to proceed against the suspect on the basis of the report made consequent to an investigation of the incident of torture by the police.

17. No cases have as yet been filed before the High Court for torture. The primary reason for this is the availability of an alternative remedy by way of a fundamental rights application filed in the Supreme Court. The constitutional remedy is simpler and more expedient than a criminal trial before the High Court, on a higher degree of proof.

2. Magistrates Court

18. The magistrate plays an important role in the protection of personal liberty and security of persons. Under article 13 (2) there is a constitutional duty and a duty under section 36 and section 37 of the Criminal Procedure Code for a person making an arrest to produce the arrested person before a magistrate without unnecessary delay and within 24 hours. When a person is brought before him, the magistrate must ascertain whether he is well or has any complaints to make and record what he observes and hears. This information can be useful in considering subsequent claims that such person may make regarding torture in custody. The magistrate also plays an important role in preventing torture in his capacity as supervisor of places of detention under Emergency Regulations.

19. Under the Penal Code the Magistrates Court has jurisdiction to hear and try charges of acts amounting to torture.

3. Supreme Court

20. The Supreme Court, under its fundamental rights jurisdiction, is competent to hear complaints of torture. In the years 1993, 1994 and 1995 the Supreme Court received between 50 and 70 applications under article 11. The majority of petitions referred to the violation of the protection from torture by police officers. Only in a very few cases were army officers named as respondents.

21. In the cases where the Court has found in favour of the petitioner appropriate compensation was awarded. In the more serious violations the relevant higher authority was ordered to take action against the offending officer and/or maintain a record for departmental purposes.

Supreme Court cases filed under article 11 of the 1978 Constitution

	1993	1994	1995
Total number of cases filed	68	58	70
Cases against police officers	62	57	68
Cases against army officers	4	1	2
Cases in which compensation was granted to the petitioner	28	20	15

22. It must be noted that the Supreme Court has taken the view that freedom from torture must be "jealously protected" and every case is scrutinized extremely carefully. Details of cases filed in 1994 and 1995 are annexed.

4. Court of Appeal

23. The Court of Appeal has jurisdiction in proceedings for the grant and issue of the writ of habeas corpus to examine also allegations of mistreatment whilst in custody. The Court has exercised this jurisdiction in several cases.

5. Human Rights Task Force (1991-1997)

24. The Human Rights Task Force (HRTF) was established in 1991 by regulations made under section 19 of the Sri Lanka Foundation Law No. 31 of 1973 to function as an independent, non-governmental organization which could "monitor observance of fundamental rights of persons detained in custody otherwise than by a judicial order". Its mandate was later continued by regulations made under the Public Security Ordinance (see Emergency (Establishment of the HRTF) Regulations No. 1 of 1995).

25. The HRTF was vested with authority to conduct regular inspection of places of detention, maintain an accurate register of persons in detention, ensure that the fundamental rights of detainees are respected and that humane treatment is accorded to them. The HRTF received complaints and representations by the detainees and took steps to remedy any shortcomings.

26. HRTF officers were able to make unannounced visits to army camps, police stations and detention camps and had unrestricted access to detainees. The HRTF head office worked round the clock to allow relatives and others to make inquiries at all times. It had nine regional centres and one sub-centre and moved strongly to prevent torture by quick responses to arrests and detention.

27. The newly established independent Human Rights Commission (HRC) of Sri Lanka which has wider investigative powers, has taken over the tasks carried out by the HRTF. The HRTF's work will therefore continue under the HRC.

6. Human Rights Commission (HRC) of Sri Lanka

28. The Human Rights Commission of Sri Lanka, which was established in March 1997, is vested with monitoring, investigative and advisory powers in relation to promotion and protection of human rights. It was set up as a permanent national institution to investigate any infringement or imminent infringement of a fundamental right declared and recognized by the Constitution and to grant appropriate relief. The powers of the Commission are wider than those of the Supreme Court and will complement the existing national framework for the protection of human rights.

29. In terms of section 14 of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the Commission may on its own motion or on a complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person investigate an allegation of the infringement or imminent infringement of a fundamental right of such person.

30. According to section 15 (3) of the Act, where an investigation conducted by the Commission discloses the infringement of a fundamental right, the Commission may recommend to the appropriate authorities that prosecution or other proceedings be instituted against the person or persons infringing such fundamental right. Alternatively, it may refer the matter to any court having jurisdiction to hear and determine such matter. Or it may make such recommendations as it may deem fit to the appropriate authority or person or persons concerned with a view to preventing or remedying such infringement or the continuation of such infringement.

31. Section 15 (6) provides that a copy of any recommendation made by the Commission must be sent to the aggrieved party, the head of the institution concerned and the minister in charge of the institution.

32. Under section 15 (7) any authority, person or persons to whom a recommendation is addressed must report to the Commission, within a specified period of time, the action which has been taken or is proposed to be taken to give effect to such recommendation. On the failure to make such report or to implement the recommendation, the Commission is given the power to make a full report of the facts to the President who shall cause a copy of such report to be placed before Parliament.

33. The Act also envisages that the Commission may appoint subcommittees at provincial level to exercise powers delegated by the Commission. This would help create greater awareness of the availability of redress by the Commission and provide easier access to such redress.

34. The Commission has also been specifically vested with the power to monitor the welfare of detained persons by regular inspection of their places of detention. In order to facilitate this function, all arrests and detention under emergency regulations and the Prevention of Terrorism Act must be

reported to the Commission within 48 hours of arrest. Wilful omission to report an arrest and detention will attract penal sanctions under the Act. Thus, monitoring of the welfare of detainees is now part of the permanent law of the land.

7. International Committee of the Red Cross (ICRC)

35. In July 1990 the Government of Sri Lanka invited the ICRC to commence humanitarian functions in Sri Lanka in association with the country's relief and rehabilitation authorities to provide humanitarian assistance to people affected by violence initiated by the Liberation Tigers of Tamil Ealam (LTTE) terrorist activity. The ICRC is granted free access to all places of detention. The Government's policy objective in this regard is to ensure that internationally accepted norms are maintained for the safety and the well-being of inmates by allowing the ICRC to interview detainees in confidence and in private.

36. The ICRC also conducts dissemination programmes aimed at further improving awareness of humanitarian rules and standards for the armed forces, police and others, with emphasis on training of instructors from the military and police schools and academies

D. Practical difficulties in implementing the Convention

37. The Government of Sri Lanka enacted the CAT Act No. 22 of 1994 on 25 November 1994. It is too early to analyse any possible difficulties regarding implementation of the Act. No significant difficulties have so far been encountered in this regard. A more meaningful account and analysis could be given in future reports.

38. The Government is however aware of allegations concerning acts of torture reportedly committed by members of the security forces in the context of counter-terrorist activities. Also, the police in combating crime are alleged to use excessive force in the handling of criminals. These transgressions are not the outcome of a deliberate policy but isolated acts carried out by some individuals. The Committee may be assured that every effort is being taken to eliminate the occurrence of such excesses. The CAT Act No. 22 of 1994 further strengthens the legal mandate of the State prosecuting authorities to take action to investigate and prosecute offenders.

II. INFORMATION RELATING TO ARTICLES 2-16 OF THE CONVENTION

Article 2. Measures to prevent torture

The fundamental rights jurisdiction of the Supreme Court

39. The Constitution of Sri Lanka makes the infliction of torture an infringement of a fundamental right. Article 11 states that "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The fundamental right to protection from torture is non-derogable and may not be abridged, restricted or denied under any circumstance. Furthermore, every person (citizens and non-citizens alike) resident in Sri Lanka is entitled to protection from torture. It is (together

with article 10 which guarantees the freedom of thought, conscience and religion) entrenched in the Constitution, in the sense that an amendment to this clause would need not only a two-thirds majority in Parliament but also a referendum.

40. Article 17 read together with article 126 of the Constitution provides for the enforcement of fundamental rights. The Supreme Court is vested with sole and exclusive jurisdiction to hear and determine any question relating to the infringement by executive or administrative action of any right recognized by the Constitution. Applications to the Supreme Court for relief and redress must be made by the person himself or through an attorney-at-law within one month of the alleged infringement or imminent infringement. Once such complaint is received and leave to proceed is granted the Court is required "to grant such relief or make such direction as it may deem just and equitable in the circumstances" within two months of the filing of such petition.

41. In the cases which have been filed under article 11, the Court has strongly denounced torture and taken an increasingly firm stance against persons found to have violated the right to freedom from torture. In the early cases, where the respondents in a complaint of torture were State officers, the Attorney-General appeared on their behalf and compensation to the victim was paid by the State. The Court in these cases emphasized the liability of the State and drew attention to the failure on the part of the State to discharge its obligation to give effect to the rights enshrined in the Constitution. Soza J. in Vivienne Gunawardene v. Hector Perera and others (1983 SC Appn. 20/83) stated that "Public authorities clothed by law with executive and administrative power are organs of the State and [an officer] using the coercive ... power vested in him by law acts as an organ of the State. As much as the State is served when he enforces the law, the State is liable for the transgressions of fundamental rights he commits when he is enforcing the law". On another occasion, Amerasinghe J. in Samanthilaka v. Ernest Perera and others (1990 1 SLR 318) stated that "the State necessarily acts through its servants, agencies and institutions. But it is the liability of the State and not that of its servants, agents or institutions that is in issue. It is not a question of vicarious liability. It is the liability of the State itself".

42. Since the late 1980s, however, the Court has not only emphasized the liability of the State but also the personal liability of State officers named as respondents in petitions under article 11. In recent years the Attorney-General as a matter of policy has declined to appear on behalf of such officers and they have had to retain their own legal counsel. The Court has also now made it a practice to order that part of the compensation be paid personally by the offender from his own resources, pointing out that payment of damages by the State can foster notions of impunity. In addition to an order that compensation be paid, the Court generally refers the matter to the appropriate authority concerned for action that it deems fit and proper. For example, where police officers have been found guilty of torture it has directed the Inspector General of Police (IGP) to take disciplinary proceedings or directed the registrar to forward a copy of the judgement to the IGP to maintain a record of the findings for departmental purposes and to ensure that the sums are paid expeditiously. In one case the Court ordered that police officers who acted in violation of article 11 should not be

promoted for one year (SC Appn. 393/93). In Sudath Peiris v. Adikari and others (SC Appn. 94/93) the Court on finding that the medical officer of the government hospital at which the petitioner was produced by the police had issued a false medical certificate, instructed the Attorney-General to consider what action should be taken against him (particularly with reference to chapter IX of the Penal Code). Following this direction, the Attorney-General instructed the Inspector General of Police to conduct an investigation into the matter. On the findings of this investigation the medical officer was indicted before the High Court of Ratnapura, under section 215 of the Penal Code, for framing an incorrect record with intent to save a person from punishment.

43. The Police Department initiated a criminal investigation against some of its officers, following the determination of the Supreme Court in the case of Wimal Vidyamani v. Lt.Col. L.E.P.W. Jayatilake and others (SC Appn. 852/91). Here the petitioner alleged two incidents, one of illegal arrest and detention in May 1990 and another incident of illegal arrest, detention and torture in November of the same year by officers of the Embilipitiya Police Station. On the finding that there was a violation of article 13 in May and a violation of articles 13 and 11 in November, the Supreme Court ordered the State to pay compensation. In addition, the Court ordered the registrar of the Court to forward to the IGP a copy of the judgement to enable him to take appropriate action and to make a report to the Court within a specified time-limit. Consequently, the IGP launched a criminal investigation into the events of May and November 1990. The Special Investigation Unit of the Police Headquarters, under the supervision of a senior superintendent of police, investigated the matter. Based on the findings of this investigation the Attorney-General's Department instituted criminal proceedings against all the suspects.

44. The Court has also taken a number of other initiatives and established certain principles of law through judicial interpretation which have resulted in a larger number of victims receiving redress through the courts.

45. The one-month time-limit has been held to be not mandatory, thereby allowing cases which fell outside this specified period to be heard. In petitions relating to torture in detention, the Court has taken the view that to make the remedy under article 126 meaningful, the one month prescribed should be calculated from the time the person is under no restraint.

46. In 1990, the Court introduced a new rule whereby the jurisdiction of the Court can be invoked simply by a letter addressed to Court. (Previously the Court acted only on the basis of sworn statements.) Letters received from persons in detention are forwarded to the Bar Association or HRTF/HRC for inquiry and filing of petitions on their behalf.

47. The Court has held that failure to add as respondents the officers whom the petitioner had identified and named in the petition and affidavit as violating the prohibition against torture is not a fatal defect and will not stand in the way of an application for relief.

Torture as defined by the Supreme Court

48. The Supreme Court has defined torture very broadly to include both physical and mental pain. In Kumarasena v. Subinspector Sriyantha and others (SC Appn. 257/93) the petitioner was a young girl who had been arrested without reasonable grounds and detained for about six hours at a police station. During that time, several police officers sexually harassed her. The Court held as follows:

> "... in the circumstances of this case, the suffering occasioned was of an aggravated kind and attained the level of severity to be taken cognizance of as a violation of Article 11 of the Constitution. The words and actions taken together would have aroused intense feelings of anguish that were capable of humiliating the petitioner. I therefore declare that Article 11 of the Constitution was violated by the subjection of the petitioner to degrading treatment."

49. In Bandara v. Wickramsinghe (1995 2 SLR 167) the petitioner, a 17-year-old boy, was assaulted by the Deputy Principal, Vice Principal and a teacher in his school. Although the physical injury suffered was not severe, the student became mentally ill, requiring hospitalization at a mental hospital for a month. The Court held that the respondents were guilty of torture. It made reference to the fact that the petitioner, who was a prefect of the school, was likely to suffer humiliation and nervous shock from violence of the kind complained of and that the assault was both cruel and degrading.

Jurisdiction of the High Court in respect of torture

50. In keeping with Sri Lanka's obligations under the Convention, Act No. 22 of 1994 has now made torture a criminal offence punishable with imprisonment and a fine. Section 2 of the Act states that any person who tortures any other person shall be guilty of an offence. Similarly, attempts to commit torture, aiding and abetting the commission of torture and conspiracy to commit torture are also offences.

51. Section 12 of the CAT Act defines torture as any act which causes severe pain, whether physical or mental, to any other person,

> "(1) for the purpose of,
>
> (i) obtaining from such person or a third person any information or confession,
>
> (ii) punishing such person for any act which he or a third person has committed,
>
> (iii) intimidating or coercing such person or third person, or
>
> "(2) done for any reason based on discrimination."

52. In accordance with Article 2 (2) and (3) of the Convention, section 3 of the CAT Act goes on to declare that the fact that torture was committed at a time of emergency, war, threat of war or internal political instability or on order of a superior office or public authority is not a defence.

The jurisdiction of the Magistrate Court in cases of torture

53. Previous to the enactment of CAT Act No. 22 of 1994, the offence of torture was punishable under the general penal laws of the country. For instance, in Magistrate Court, Embilipitiya, case No. 77818, five police officers are being charged with abduction (under section 356 of the Penal Code), wrongful confinement (under section 333 of the Penal Code) and grievous hurt (under section 314 of the Penal Code). The case was filed in August 1993, following the decision of the Supreme Court in the case of Wimal Vidyamani (see above) where the Supreme Court found that there was a violation of article 13 (1) and (2) and article 11 by certain police officers. Other laws relating to criminal procedure and evidence aim at the prevention and elimination of torture.

Arrest and detention

54. Article 13 (2) of the Constitution guarantees that no person shall be arrested except in accordance with procedure established by law and that every person held in custody, detained or otherwise deprived of personal liberty shall be brought before a judge and shall not be further held in custody except upon terms of the order of such judge made in accordance with the procedure established by law.

55. Under the Criminal Procedure Code a person arrested has to be produced before a magistrate within 24 hours (section 37). Such person cannot be further detained or held in custody except upon and in terms of the order of such judge. Thus, an order for remand must necessarily be made by a magistrate and it is the duty of the magistrate to consider independently whether the person arrested should be released on bail or whether he should be remanded to the custody of the superintendent of a prison, pending trial. The law recognizes that a person may not be kept indefinitely in custody pending trial. Where proceedings are not instituted within a period of three months from the date of arrest, the suspect may be released on bail.

56. The provisions requiring production of an arrested person before a magistrate within 24 hours is also found in the Police Ordinance in the form of a positive duty imposed on a police officer. Section 65 provides that any person arrested without warrant by a police officer shall be forthwith delivered into the custody of the officer in charge of a station, and if not released on bail shall be produced before a magistrate within 24 hours unless circumstances render delay unavoidable. Section 82 imposes a penalty on any police officer who is guilty of willful culpable neglect of duty in not bringing any person who shall be in his custody without warrant before a magistrate.

57. Arrest and detention can also take place under the emergency regulations made by the President under section 5 of the Public Security ordinance (see emergency (miscellaneous provisions and powers) regulation No. 4 of 1994 as

amended) and the Prevention of Terrorism Act No. 48 of 1979 (as amended). These laws were necessitated by the exigencies of the security situation brought about by terrorist activity and for the preservation of public order and the maintenance of supplies and services essential to the life of the community. These laws are constantly reviewed and maximum precautions are taken to ensure the physical and mental well-being of the detainees.

58. In terms of regulation 17 of the emergency regulations (ERs) the Secretary, Defence can order the detention of a person for a period not exceeding three months at a time up to a maximum period of one year if he is satisfied upon material submitted to him that such an order is necessary. The Secretary's order under emergency regulation 17 cannot be arbitrary or mechanical and can be questioned on the grounds of reasonableness. The Secretary must be able to state that he himself formed an opinion objectively by means of sufficient evidence and that this opinion is one which he formed as a reasonable person. Bold assertions are insufficient. His decision must be reviewed every three months to ensure that reasonable grounds exist for continued detention.

59. Regulation 18 (1) empowers a police officer or a member of the armed forces to arrest any person who has committed or who is committing any offence under the ERs. A person so arrested can be kept in custody for a period not exceeding 21 days and if the arrest was made in the Northern or Eastern province for a period not exceeding 60 days. At the end of such period he must be released unless such person is detained under regulation 17 or is produced before a court of law.

60. In terms of section 6 (1) of the Prevention of Terrorism Act (PTA) any police officer not below the rank of superintendent or any other police officer not below the rank of subinspector authorized in writing may arrest without a warrant a person connected with any offence set out in section 2 of the PTA. Such a person can be kept in custody for a period not exceeding 72 hours unless a detention order is made under section 9 of the Act. A detention order under section 9 is for a period of three months at the first instance. Such period can be extended from time to time for a period not exceeding 3 months at a time for a maximum period of 18 months.

61. Any person aggrieved by a detention order under the emergency regulations or the PTA can appeal to the Advisory Board under emergency regulations (regulation 17 (5)-17 (11)) or the Advisory Committee established under the PTA to have the detention order reviewed (section 13 (1) of the PTA).

62. Furthermore, the Government, through the Committee to Process, Classify and Recommend Rehabilitation and Release of Suspects, also works towards the expeditious release of those taken into custody on suspicion of subversive activity under ERs and the PTA. The Committee has the power to recommend the release or rehabilitation of suspects in the following circumstances:

(a) Where a police investigation is completed and does not reveal sufficient evidence to forward the case to the Attorney-General's Department for indictment, the Committee receives the police report and recommends release or rehabilitation;

(b) Where findings of the police investigation are forwarded to the Attorney-General for indictment but where the Attorney-General reports that the suspect will not be indicted due to insufficient evidence, the Committee considers these cases individually and recommends release or rehabilitation;

(c) Where representations are made to H.E. the President, Deputy Minister of Defence or Secretary, Defence to review a detention order, the Committee calls for a report and recommends release or rehabilitation;

(d) The Committee may on its own initiative review a detention order where it is brought to the notice of the Committee, e.g. by the media, that a certain detention order is not based on sufficient evidence or is not justifiable.

63. The Committee has the power to conduct independent investigations by calling for statements from or interviewing the detainee and the police officer/army personnel concerned and to make judgements based on the evidence available. Whilst the Committee has the power to inquire and to dispose of direct complaints made to it of unjustifiable arrest and detention, it also has ultimate authority over the decisions of the Advisory Board under the ERs and the Advisory Committee under the PTA.

64. Arrest and detention, both under normal laws and the ERs and the PTA, can be challenged by way of a fundamental rights application under article 13 of the Constitution.

65. It needs also to be emphasized that the procedure followed in respect of persons detained and indicted under ERs and the PTA, i.e. regarding investigations, filing of cases in the courts, leading evidence, etc., is the normal procedure applicable in any criminal case. Thus, once a persons is detained under ERs and the PTA the police are under a duty to conduct an investigation into the case and forward their findings to the Attorney-General's Department. Where there is sufficient evidence, the suspect has to be indicted in the ordinary courts according to the procedure established by law. Every such detainee has the right to legal counsel.

66. A new High Court in Colombo began sittings on 15 August 1997 and a new High Court in Vavuniya began sittings on 11 September 1997 to expedite the hearing of cases under the PTA and the ERs, thereby reducing the time spent in detention by persons detained under these laws.

Protection of the liberty and security of persons detained under ER's and the PTA

67. Freedom from torture is sought to be ensured under the ERs and the PTA through a multiplicity of safeguards which have been built into these laws. During the time the HRTF was in operation these safeguards were reiterated/ strengthened by the emergency (establishment of the HRTF) regulations and by the directives issued by the President to the armed forces and the police thereunder.

68. On the functions of the HRTF being taken over by the HRC, the monitoring of the welfare of persons detained without judicial order has become part

of the permanent law of the land (see sections 28 (1)-(3) of the HRC Act). On 7 September 1997 the President reissued directions to the armed forces and the police, which are identical to those issued under the regulations establishing the HRTF to ensure that the armed forces and the police cooperate with and assist the new Commission so as to enable the Commission to efficiently and without interruption continue the work commenced by the HRTF.

69. The following safeguards against torture are contained in the ERs and the PTA:

(a) The arresting officer must issue a document informing of the arrest to the spouse, father, mother or other close relative of the detainee. The document must contain the name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained or held in custody (regulation 18 (8));

(b) Every arresting officer must report an arrest made under regulation 18 within 24 hours to a superior officer (regulation 18 (7));

(c) Every place of detention under the ERs has to be approved by the Secretary, Defence and be published in the government gazette. The existence of and the address of places of detention has to be notified to the magistrate within whose jurisdiction such places are located. It is a punishable offence to detain a person in any place other than in a place authorized by the Secretary (regulation 19 (4) and 19 (8));

(d) Every officer in charge of a detention camp is obliged to furnish the magistrate every fortnight a list of detainees held by him. The magistrate is obliged to post this list on the court notice board and to visit the camp every month (regulation 19 (6)).

70. The following provisions are contained in the Presidential directives issued to the armed forces and the police to enable the HRC to exercise its powers, and perform its functions and duties and for the purpose of ensuring that the fundamental rights of persons arrested or detained are respected and that such persons are treated humanely:

(a) Every member of the armed forces and the police shall assist and facilitate the HRC and any person authorized by the HRC in the exercise of its powers, duties and functions, and also ensure that the fundamental rights of persons arrested or detained are respected;

(b) No person shall be arrested or detained under any ERs or the PTA except in accordance with the law and proper procedure and by a person who is authorized by law to make such arrest or order such detention;

(c) At or about the time of the arrest or, if it is not possible in the circumstances, immediately thereafter,

(i) The person making the arrest must identify himself by name and rank to the person arrested or any relative or friend of such person upon inquiry being made;

(ii) Every person arrested or detained must be informed of the reason for the arrest;

(iii) The person making the arrest/detention shall issue to the spouse, father, mother or any other close relation a document in a form specified by the Secretary, Defence, acknowledging the fact of arrest. The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained shall also be specified. It shall be the duty of the holder of such document to return the same to or produce the same before the appropriate authority when the person so arrested or detained is released from custody. Where any person is taken into custody and it is not possible to issue such document, it shall be the duty of the arresting officer, if such officer is a police officer, to make an entry in the Information Book giving the reasons why it is not possible to so issue a document, and if the arresting officer is a member of the armed forces to report the reasons why it is not possible to issue a document to the officer in charge of the police station, whose duty it shall be to make an entry of such fact, along with the reasons in, the Information Book;

(iv) The person arrested should be afforded means of communicating with a relative or friend to enable his whereabouts to be known to the family;

(d) When a child under 12 years or a woman is sought to be arrested or detained, a person of his/her choice should be allowed to accompany him/her to the place of questioning. As far as possible, a child or woman should be placed in the custody of a women's unit of the armed forces or the police force or in the custody of female military or police officers;

(e) A statement of a person arrested/detained should be recorded in the language of that person's choice, who should thereafter be asked to sign the statement. A person who desires to make a statement in his or her own handwriting should be permitted to do so;

(f) The members of the HRC or any person authorized by it should be permitted access to the person arrested or detained and should be permitted to enter at any time any place of detention, police station or any other place in which such person is detained in custody or confined;

(g) Every officer who makes an arrest or detention shall forthwith, and in any case not later than 48 hours from the time of such arrest/ detention, inform the HRC or any person specially authorized by the HRC, of such arrest/detention and the place at which the person so arrested or detained is being held in custody.

External monitoring of the welfare of detainees

71. There is also monitoring of conditions of detainees by the ICRC. The ICRC is allowed full and free access to all places of detention. The ICRC visits places of detention on a regular basis and interviews detainees without any oversight on the part of the prison authorities. They monitor conditions of detention, focusing on the way detainees are treated in physical and psychological terms. They check the detainees' state of health and arrange exchanges of messages with their families. On the basis of these visits and their findings the ICRC is able to make oral and written representations to the Government where necessary.

Rules of evidence

72. Under the Evidence Ordinance confessions caused by any inducement, threat or promise are inadmissible in criminal proceedings in a court of law. Under the same Ordinance, no confessions made while a person is in the custody of a police officer can be proved against such person (see sections 24, 25 and 26). The Supreme Court has extended this prohibition to include even confessions made to police officers in their private capacity or when the accused was unaware that he was making the statement to a police officer.

73. The emergency regulations do provide for a departure from the normal rules of evidence (regulation 49), but the general judicial reluctance to convict a person purely on a confessional statement in the absence of other evidence works as an important safeguard. The High Court has emphasized that in all these cases the prosecution must prove its case to the hilt and that the ingredients which constitute the offence under the PTA and the ERs have to be independently proved while the confession which is otherwise not relevant could be led in evidence to corroborate the story of the prosecution. The Court has held that "it would be a travesty of justice to convict a person merely on a confession without any other corroborative grounds" (case of Krishnapillai Nageswaran as reported in The Island of 13 September 1994).

Prisoners

74. Every person admitted to prison is examined by a doctor who records his observations, and such record serves as a reference to check whether the condition of the prisoner has deteriorated in any manner whilst in detention. The detainee is also informed of his rights and duties as a detainee and such instructions would include the detainee being informed of his right to complain about any ill-treatment whilst in custody.

75. The Board of Prison visitors appointed by the Minister of Justice under the Prison Ordinance are empowered to visit any prison in the island to examine conditions, hear complaints of inmates and make appropriate recommendations to the authorities. There are also local prison visitors committees for each prison entrusted with the task of overseeing the welfare of prisoners.

76. The Prison Ordinance also authorizes a magistrate to visit a prison at any time and to question any detainee.

Article 3. Non-refoulement

77. The Extradition Law No. 8 of 1977 of Sri Lanka incorporates recognized restrictions on extradition which include the possibility of punishment, detention or restriction by reason of race, religion, nationality or political opinion (section 7 (1)). This provision is wide enough to be invoked in situations envisaged by article 3 of the Convention.

78. As a matter of policy Sri Lankan nationals are not extradited to countries where the death penalty or other forms of degrading punishment are likely to be imposed. These considerations would apply even in cases of non-nationals. Non-refoulment of an offender to a State where he/she would be in danger of being subjected to torture would be given effect to by way of administrative or executive action taking into account all relevant factors.

Article 4. Torture as a criminal offence

79. In keeping with Article 4 (2) of the Convention the Act recognizes the grave nature of the offence of torture; the offence is made a non-bailable, cognizable offence and the jurisdiction to try cases of torture at the first instance has been vested with the High Court.

80. A person convicted of the offence of torture after trial by the High Court is punishable with imprisonment for a term not less than 7 years and not exceeding 10 years, and a fine not less than Rs 10,000 and not exceeding Rs 50,000 (section 2 (4) of the Act of 1994).

81. Prior to the enactment of CAT Act No. 22 of 1994, persons suspected of having committed torture were charged under the provisions of the Penal Code. It must be noted that the Penal Code does not specifically provide for the offence of torture as defined in the Convention. But the penal provisions under the chapter relating to "Offences affecting the human body" is wide enough to cover the offence of torture as contained in the Convention. Thus, in case No. 77818 before the Magistrate Court of Embilipitiya, police officers found guilty of torture by the Supreme Court pursuant to a fundamental rights application have been charged with grievous hurt under section 214 of the Penal Code.

Article 5. Jurisdiction of the High Court in respect of torture

82. The Magistrate Court and the High Court have jurisdiction over all criminal offences, including torture committed within the territory of Sri Lanka.

83. In terms of section 4 of the CAT Act, the High Court is to have jurisdiction over acts of torture committed outside the territory of Sri Lanka in cases where:

(a) The offender is in Sri Lanka or on board a ship or aircraft registered in Sri Lanka;

(b) The alleged offender is a citizen of Sri Lanka;

(c) The alleged victim is a citizen of Sri Lanka.

Article 6. Criminal proceedings

84. Every person suspected of having committed a criminal offence is liable to be arrested under the criminal law of Sri Lanka. As torture is a cognizable offence, an offender can be promptly taken into custody without a warrant. Bail, remand and the institution of criminal proceedings consequent to such person being taken into custody will be in accordance with the general penal law of the country. Accordingly, a person suspected of having committed torture, once arrested, must be produced before a magistrate within 24 hours of arrest. The magistrate can release the suspect on bail until the institution of criminal proceedings or detain the suspect pending further investigation, for a total period of 15 days and no more. If at the end of this period proceedings are not instituted the magistrate must either discharge the suspect or release him on bail.

85. Once the investigation is completed according to the procedure specified in the Criminal Procedure Code, a report of the investigation should be forwarded to the Attorney-General's Department for advice. If the Attorney-General is of the view that there is sufficient evidence to proceed against the suspect he will file an indictment in the High Court.

86. Section 6 of the CAT Act provides that where a person who is not a citizen of Sri Lanka is arrested for the offence of torture, he is entitled to communicate without delay with the nearest appropriate representative of the State of which he is a national.

87. Section 7 (1) of the CAT Act provides that where a person is arrested for the offence of torture, the Minister of Foreign Affairs will inform the relevant authorities in any other State having jurisdiction over that offence of the measures taken to either prosecute or extradite such person.

88. Section 7 (2) of the CAT Act provides that where a request is made to the Government of Sri Lanka for the extradition of any person accused or convicted of torture, the Minister of Foreign Affairs must inform the requesting State of the measures which Sri Lanka has taken or proposes to take for prosecution or extradition of that person.

Article 7. Prosecution and guarantee of fair trial

89. Section 7 of the CAT Act, in keeping with article 7 of the Convention, contemplates the prosecution or extradition of any person who is arrested for an offence under the Act.

90. The Constitution guarantees that all persons charged with an offence are entitled to due process of the law. Article 13 (3) of the Constitution states that any person charged with an offence shall be entitled to be heard in person or through an attorney-at-law at a fair trial by a competent court. Principles such as complete intimation of the charge, facilities for the preparation of defence, the right to legal assistance, the right to examine witnesses, etc. are well established in the law.

Article 8. Extradition

91. In terms of the Extradition Law No. 8 of 1977, extradition is conditional on the existence of an extradition treaty except in the case of Commonwealth countries. In relation to Commonwealth countries, extradition is possible in respect of extraditable offences as laid down in the Schedule to the Extradition Law. Prior to the enactment of CAT Act No. 22 of 1994, the following offences under the Penal Code were listed in the Schedule as extraditable offences:

(a) Voluntary harm causing grievous hurt;

(b) Voluntary harm causing hurt;

(c) Rape.

92. The Act brings the law relating to extradition in line with article 8 of the Convention by making the following provisions and amendments:

(a) Section 9 (1) of the CAT Act No. 22 of 1994 now provides that where there is an extradition agreement between the Government and any other State, it is deemed to include provision for extradition in respect of torture as defined in the Convention and of attempting to commit, aiding and abetting the commission of or conspiring to commit the offence of torture;

(b) Section 9 (2) of the CAT Act provides that in the absence of an extradition arrangement, the Minister may, by order published in the gazette, treat the Convention as an extradition arrangement for extradition in respect of the offence of torture.

The Act also amends the Extradition Law No. 8 of 1977 to include torture as an extraditable offence.

Article 9. Cooperation and assistance in connection with criminal proceedings for the offence of torture

93. The CAT Act, in section 10, provides that the Government shall afford such assistance to the relevant authorities of any other State as may be necessary in connection with criminal proceedings for the offence of torture.

94. As a matter of international comity, the Government of Sri Lanka extends its cooperation to other States in connection with criminal proceedings on a case-by-case basis and on assurance of reciprocity, for example, by serving legal documents from abroad and recording evidence. Mutual legal assistance in the recording of evidence, etc. is usually afforded on the basis of bilateral or multilateral agreements on receipt of a letter rogatory.

Article 10. Education and information on the prohibition against torture

95. Human rights education forms part of the training of all law enforcement officers, members of the armed forces and prison officers. This training includes lectures on the fundamental rights guaranteed by the Constitution,

international human rights norms, other laws, the rights of citizens and the duties and obligations of law enforcement officers. These lectures are reinforced by demonstrations and visual aids. Seminars and discussions are held during various stages of the officers' service.

96. Human rights education was introduced into police training in the early 1980s. It is now a subject of instruction in the Sri Lanka Police College where basic training is provided for new recruits, at the Police Higher Training Institute where promotional and refresher courses are provided, and at Divisional Training Centres where in-service training is provided. Officers are questioned on aspects of human rights at all examinations. In 1997, all officers in charge, assistant superintendents of police, deputy inspectors general and superintendents of police will undergo a special training programme on international human rights norms.

97. As a matter of policy the Government is committed to ensuring that all service personnel are properly instructed and trained to respect and observe standards of human rights and humanitarian law, so that their powers are not used arbitrarily or excessively and that weapons are not used indiscriminately. While the law of war and humanitarian law have been part of the education and training of the armed forces, the scope and content of these programmes are being revised with emphasis on understanding and practice.

98. Consequent to a recent high-level conference held at the ICRC in Geneva which was attended by a delegation of senior officers from the army, it was decided in early 1997 to establish a separate directorate at army headquarters to deal exclusively with international humanitarian law. The role and tasks of the directorate include ensuring respect for international humanitarian law and the law of war in the ongoing operations of the security forces, planning and implementing an information programme on a regular basis for all ranks in operational areas and in training institutions, and working out a new syllabus to be taught to army personnel ranging from recruit to captain level for the purpose of introducing this as a compulsory subject at promotion exams.

99. The Government has also benefited from the assistance received from non-governmental organizations in conducting human rights awareness programmes for the armed forces, the police and other public servants.

International Committee of the Red Cross

100. ICRC began conducting seminars aimed at further promoting the awareness and understanding of international humanitarian law among the armed forces in Sri Lanka in 1986. Since the establishment of an ICRC delegation in Sri Lanka in 1990, these programmes have continued and were expanded to include law enforcement officers, members of special task forces, paramilitary units, public servants and Sri Lanka Red Cross workers. Regular courses/lectures are held for all levels of armed forces personnel in training centres and in operational areas. Approximately 35,000 persons have participated in these seminars since June 1993, 25,000 of them armed forces personnel. In March 1997, the ICRC conducted a week-long seminar on humanitarian law for 10 army majors and 15 captains. These officers are expected to be sent in teams to training centres and operational areas to disseminate this knowledge.

101. The ICRC has also printed booklets in English, Sinhala and Tamil on the law of war and instruction manuals which have been distributed to the forces. It also sponsors members of the armed forces to participate in international/regional seminars on humanitarian law.

Centre for the Study of Human Rights (CSHR)

102. The CSHR launched a programme in June 1993 to provide human rights education for the armed forces and the police with a view to sensitizing them to the value of human rights and to point out the limits of their powers. Subsequent to preliminary discussions with the Directors of Training of the armed forces and police, two introductory seminars/workshops were conducted for a group of 31 new assistant superintendents of police and 7 naval officers, respectively.

103. In 1995 steps were taken to supplement the training of three specific target groups, i.e. the policy maker, trainer and recruit levels of the armed forces and the police. A training manual has been compiled covering human rights standards and court cases for the trainers and a handbook for the recruits. The training manual was formally presented to trainers in the armed forces and the police in March 1995, at a one-day workshop held in Colombo.

Other activities

104. A diploma programme in forensic medicine, conducted for practitioners of criminal law by the Faculty of Medicine of the University of Colombo, also incorporates a human rights component. One section of the course focuses on legal aspects of torture and deaths in custody. The course content includes international and national legal standards which outlaw torture and deaths in custody, with emphasis on the Convention against Torture and the CAT Act No. 22 of 1994.

105. Seminars and lectures on the medical aspects of torture have been organized by the Forensic Medical Department of the Medical Faculty in the recent past, for the information of those in the medical profession as well as the general public. Human rights and torture is soon to be introduced as a special subject of study for undergraduates studying medicine at the University of Colombo.

Article 11. Mechanism to review rules with a view to preventing torture

106. A number of governmental and non-governmental, formal and informal mechanisms exist to review laws and practices having an impact on human rights.

107. The Government is at present engaged in enhancing and further expanding the fundamental rights entrenched in the Constitution. The Parliamentary Select Committee on Constitutional Reform appointed in 1994 to draft a new Constitution is entrusted with this task. The Select Committee is a multi-partisan body comprising representatives of all political parties holding seats in Parliament. Members of the public, registered political parties, non-governmental organizations and academics were also extensively

consulted with regard to their views on reform. Over 70 meetings have been held and a broad consensus has already been reached on the draft chapter on fundamental rights. The draft recognizes several rights not recognized under the 1978 Constitution and allows a citizen to obtain relief in respect of infringement or imminent infringement of rights by lower courts which exercise original jurisdiction, for example by failing to grant bail or failure to follow prescribed procedures.

108. Committees and commissions are appointed by the Government from time to time to review specific laws and practices impacting on human rights. A committee appointed in February 1995 "to Inquire into and Report on the Reorganization of the Police" has reviewed the human rights component in police training as well as the existing mechanisms available to make complaints against police officers. The Committee's recommendations in this regard are being considered by the Ministry of Defence.

109. Inter-Ministerial meetings convened as and when required also afford an opportunity to review laws and practices impinging on rights. The recommendations made by the Human Rights Committee on consideration of Sri Lanka's fourth periodic report submitted under International Covenant on Civil and Political Rights are currently being reviewed and processed by the Ministries of Justice and Defence with a view to their implementation.

110. The newly established Human Rights Commission (HRC) of Sri Lanka will function in an advisory capacity to the Government in the fields of legislative and administrative practice and make recommendations to the Government to ensure that these laws and practices are in conformity with the Constitution and international human rights norms.

111. Non-governmental organizations concerned with human rights act as watchdogs of governmental laws, regulations and practices impacting on human rights. The Government maintains a dialogue with the NGO community and their suggestions and recommendations are given the fullest consideration. For instance, in 1991, the Centre for the Study of Human Rights together with the Nadesan Centre undertook to list, review and analyse the impact of emergency rule on the human rights of the people. Recommendations to reduce the harsh impact of emergency regulations were submitted to the President in November 1992. In February 1993 the Government amended some ERs and undertook to revise others in keeping with the Centre's recommendations.

112. This dialogue has been further strengthened by the appointment of an advisory group comprising representatives of non-governmental organizations active in the field of human rights, to assist the Ministry of Foreign Affairs to deal with human rights issues, in particular those relating to international obligations undertaken by Sri Lanka. The members of the advisory group serve in an individual capacity and on an honorary basis. Their appointment in no way precludes them from continuing to engage in their public campaigning for human rights including commenting upon or criticizing the Government's performance in this area.

Emergency regulations relating to arrest and detention

113. The Ministry of Defence periodically reviews and amends ERs relating to arrest and detention with a view to preventing excesses by officers. Over the years these laws have been considerably improved and strengthened. Most recently, regulation 22 relating to persons surrendering was completely repealed and replaced with a new and improved regulation. According to the amendment any person who surrenders to a governmental authority in connection with certain specified offences, including any offence under ERs, will not be detained with other persons arrested under ERs or the PTA but will be handed over to the Commissioner General of Rehabilitation who shall assign the persons to a "Protective Accommodation and Rehabilitation Centre" for the purpose of rehabilitation (Gazette No. 938/13 of 29 August 1996).

114. It must be noted that the Government alone cannot decide to continue the state of emergency. It can only be extended a month at a time on being approved by a majority vote after full debate in Parliament.

Articles 12 and 13. Right of complaint and provision for prompt and impartial investigation

115. The police are duty bound to carry out a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed or when a complaint is made alleging that a person has been subjected to or is being subjected to torture.

116. According to section 109 (1) of the Criminal Procedure Code any person can give information relating to the commission of a crime to any police officer or inquirer, orally or in writing. If from receipt of such information or otherwise an officer in charge of a police station or inquirer has reason to suspect the commission of a cognizable offence he must send a report to the Magistrate Court having jurisdiction in respect of such offences or to his own immediate superior and must proceed to investigate the facts and circumstances of the case and take such measures as may be necessary for the discovery and arrest of the offender. Every police officer making an investigation is vested with powers to require the attendance of persons who are able to give information, orally examine any such person and search any person. Once sufficient evidence is obtained the suspect can be arrested and produced before a court of competent jurisdiction within 24 hours of such arrest.

Complaints against police officers

117. Complaints against police officers, including complaints of alleged torture, can be made to a special subunit under the Senior Deputy Inspector General (DIG)/Administration which has been set up for the purpose. The head of the division is the Director/Disciplinary Inquiries.

118. Whenever a complaint is received, the Director/Disciplinary Inquiries registers it and sends it to the respective divisions to be inquired into. The respective deputy inspectors general supervising these divisions send them in turn to the Superintendent of Police (heads of division, functional or territorial) to make the necessary inquiries. If a prima facie case against

the officer is established at this preliminary inquiry it is then sent for a further panel inquiry chaired by an assistant superintendent of police. A member of the public also serves on the panel.

119. On the findings of the inquiry, disciplinary proceedings are pursued in accordance with the Police Ordinance (section 55), Police Orders (section 82) and the Establishment Code. If the preliminary investigations reveal a case to proceed to criminal action this is done, but any departmental inquiry which has been initiated continues as stipulated in the Establishment Code.

120. A complaint against a police officer can also be made to the Special Investigation Unit (SIU) which functions directly under the Inspector General of Police. Whenever a complaint of a serious nature has to be conducted, the Inspector General of Police, at his discretion, refers those complaints directly to the SIU. The SIU reports directly to the Inspector General of Police and, where necessary, files complaints against police officers who are found to have committed criminal offences.

121. While an attempt is made to deal with all complaints promptly, shortage of staff and other facilities in the Disciplinary Inquiries Unit hampers the prompt disposal of complaints. Another drawback is that the Department does not have a mechanism to keep proper track of all the complaints that have been made against officers. Since some complaints are referred to the SIU and only the balance referred to the Disciplinary Unit, there is no central point at which the monitoring of complaints can be done.

122. A recent Police Commission report has recommended that a "cell" be established directly under the Inspector General of Police to monitor the progress of all such cases and for effective follow-up action. The Committee has also suggested that all complaints against police officers should be referred to a panel consisting of a member of the public, even at the preliminary inquiry stage, so that impartiality of the inquiry is ensured. Action is being taken in this regard.

The fundamental rights jurisdiction of the Supreme Court

123. Any person has the right to make a complaint to the Supreme Court where his/her fundamental right to protection from torture has been violated. Under the new Supreme Court rules the Court's jurisdiction can be invoked simply by a letter.

124. The Court does not, however, conduct an investigation. Its decision is based on the documentary evidence placed before it. Where the Court's jurisdiction is invoked by a letter it may refer the matter for inquiry and report to the HRC or the Bar Association. The Supreme Court may also refer any matter arising in the course of an application made to the Court under article 126 of the Constitution to the Human Rights Commission for inquiry and report. See also paragraphs 39-47 above.

Human Rights Commission of Sri Lanka (HRC)

125. The Commission has the following powers of investigation:

(a) To procure and receive all evidence, written or oral, and to examine all such persons as witnesses;

(b) To require the evidence of any witness, to be given on oath or affirmation;

(c) To summon any person residing in Sri Lanka to attend any meeting of the Commission to give evidence or produce any document or other thing in his possession, and to examine him as a witness or require him to produce any document or other thing in his possession;

(d) To admit, notwithstanding any of the provisions of the Evidence Ordinance, any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings;

(e) To admit or exclude the public from such inquiry or investigation or any part thereof.

126. The powers and functions of the HRC have been further explained in paragraphs 28-34 above.

International Committee of the Red Cross

127. The ICRC is given full and free access to places of detention and hear complaints in confidence. Complaints received by the ICRC are forwarded to an appropriate authority for investigation. See also paragraphs 35-36 above.

Article 14. Compensation and rehabilitation

128. Where a fundamental rights application has been made to the Supreme Court for the alleged infringement of the right to freedom from torture, and the allegation has been proved, the Court in the exercise of its power "to grant such relief or make such direction as it may deem just and equitable in the circumstances" has invariably ordered compensation for the victim. Varying amounts of compensation have been granted by the Court.

129. It is, however, recognized that the amounts ordered by the Court may not always be adequate. In ordering the payment of compensation, the Court is faced with certain difficulties. On the one hand, the Court must endeavor to dispose of the matter expeditiously. Thus, where serious personal injury is caused an assessment has to be made before the victim's condition has improved. On the other hand, the Court must make its decision on the basis of medical reports that may be inadequate. Evidence on relevant matters such as the income of the petitioner, past and future loss of income, past and future medical and other expenses resulting from the injury, etc. are also not generally placed before the court. Furthermore, in determining the amount payable by the respondent the Court has to have regard to his means.

130. Although the Act does not specifically address the question of payment of adequate compensation by the High Court to victims of torture, in terms of section 17 (4) of the Criminal Procedure Code a court can, upon conviction of

a person of any offence or where it holds the charge to be proved but proceeds to deal with the offender without convicting him, order the person convicted or against whom the charge is held to be proved to pay compensation, to be determined by the court, to any person affected by the offence. Accordingly, the High Court is vested with the power to award compensation to victims of torture.

131. There are a number of non-governmental organizations which provide integrated medical, psychological and counselling services for victims of torture. These services are tailored to the requirements of each individual. Some NGOs specifically focus on assistance and rehabilitation of torture victims and their families. Weekly medical clinics are conducted in Colombo and at outreach centres by these organizations. According to these NGOs the trauma of torture is compounded by socio-economic factors such as difficulties in finding a job. Thus, such persons are assisted by referring them to other NGOs for self-employment loans, skills-training, etc.

Article 15. Statements made as a result of torture

132. Under the Evidence Ordinance a confession obtained by any inducement, threat or promise is irrelevant in criminal proceedings in a court of law. Under the same Ordinance no confession made by a person whilst he is in the custody of a police officer can be taken as evidence against such person. Legislation enacted to cope with certain serious offences relating to the security of the State and serious economic offences provide for the admissibility of confessions in certain situations if made in the presence of certain police officers or officers of certain departments. However, even in those situations confessions caused by inducement, threat or promise are regarded as irrelevant in criminal proceedings.

133. Section 5 of the CAT Act of 1994, however, recognizes that a confession otherwise inadmissible in any criminal proceedings will be admissible in any proceedings instituted under the Act for the purpose only of proving the fact that such confession was made.

Article 16. Other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture

134. Other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture as defined in the Convention are offences under the Penal Code. Where such an offence is committed by a person acting in an official capacity or at the instigation of, or with the consent or acquiescence of a public official, any one of the following provisions of the Penal Code may be invoked: voluntary harm, causing hurt (section 314), voluntary harm causing grievous hurt (section 366), voluntary harm causing hurt to extort a confession or to compel restoration of property (section 321), voluntary harm causing grievous hurt to extort a confession or to compel restoration of property (section 322), wrongful restraint (section 330), wrongful confinement (section 331), assault or use of criminal force (section 343), criminal intimidation (section 483), etc.

135. Note that three of the four illustrations given by the Penal Code under section 321 refer specifically to public officers.

List of annexes*

Convention against Torture Act No. 22 of 1994

Penal Code No. 2 of 1883

Code of Criminal Procedure No. 15 of 1979

Evidence Ordinance No. 14 of 1895.

Prevention of Terrorism Act No. 48 of 1979 as amended by Act No. 10 of 1982

Emergency (miscellaneous provisions and powers) regulation No. 4 of 1994 relating to arrest and detention (as amended)

Emergency (establishment of Human Rights Task Force) regulation No. 1 of 1995

Presidential directives issued in July 1995 to the armed forces and the police under regulation 8 (1) of the emergency (establishment of Human Rights Task Force)

Regulation No. 1 of 1995 to enable the HRTF to exercise its powers and perform its functions and for the purpose of ensuring that fundamental rights of persons arrested or detained are treated humanely.

Regulation made by the President under the Public Security Ordinance rescinding the HRTF

National Human Rights Commission Act No. 21 of 1996

Presidential directives issued in June 1997 to the armed forces and the police to enable the HRC to perform its functions effectively

Statistics on fundamental rights cases filed in the Supreme Court under article 1[illegible] of the Constitution in 1995.

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* The annexes are available for consultation in the files of the Office of the United Nations High Commissioner for Human Rights.

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